

House Bill 355

By: Representatives Williams of the 4th, Dickson of the 6th, and Jerguson of the 22nd

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco products, so as to change certain provisions relating to the excise tax on certain tobacco products; to provide for a definition; to establish the rate of tax on certain tobacco products; to establish the retail selling price before the addition of certain taxes; to provide exemptions from certain taxes; to authorize the collection and payment on the first taxable transaction; to change certain provisions regarding civil and criminal penalties; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 11 of Title 48 of the Official Code of Georgia Annotated, relating to taxes on tobacco products, is amended by revising Code Section 48-11-1, relating to definitions relative to taxes on tobacco products, as follows:

"48-11-1.

As used in this chapter, the term:

(1) 'Cigar' means any roll for smoking made wholly or in part of tobacco when the cover of the roll is also tobacco.

(2) 'Cigar dealer' means any person located within the borders of this state who sells or distributes cigars to a consumer in this state.

(3) 'Cigar distributor' means any person, whether located within or outside the borders of this state, other than a cigar dealer, who sells or distributes cigars within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigar dealers; and

(B) Is engaged in the business of:

(i) Importing cigars into this state or purchasing cigars from other cigar manufacturers or cigar distributors; and

(ii) Selling the cigars to cigar dealers in this state for resale but is not in the business of selling the cigars directly to the ultimate consumer of the cigars.

(4) 'Cigar importer' means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigar for sale or distribution.

(5) 'Cigar manufacturer' means any person who manufactures, fabricates, assembles, processes, or labels a finished cigar.

(6) 'Cigarette' means any roll for smoking made wholly or in part of tobacco when the cover of the roll is paper or any substance other than tobacco.

(7) 'Cigarette dealer' means any person located within the borders of this state who sells or distributes cigarettes to a consumer in this state.

(8) 'Cigarette distributor' means any person, whether located within or outside the borders of this state, other than a cigarette dealer, who sells or distributes cigarettes within or into the boundaries of this state and who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on cigarette dealers; and

(B) Is engaged in the business of:

(i) Importing cigarettes into this state or purchasing cigarettes from other cigarette manufacturers or cigarette distributors; and

(ii) Selling the cigarettes to cigarette dealers in this state for resale but is not in the business of selling the cigarettes directly to the ultimate consumer of the cigarettes.

Such term shall not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer with a valid permit under 26 U.S.C. Section 5712, if such person sells or distributes cigarettes in this state only to cigarette distributors who hold valid and current licenses under Code Section 48-11-4 or to an export warehouse proprietor or another cigarette manufacturer with a valid permit under 26 U.S.C. Section 5712.

(9) 'Cigarette importer' means any person who imports into or who brokers within the United States, either directly or indirectly, a finished cigarette for sale or distribution.

(10) 'Cigarette manufacturer' means any person who manufactures, fabricates, assembles, processes, or labels a finished cigarette.

(11) 'Counterfeit cigarette' means cigarettes that are manufactured, fabricated, assembled, processed, packaged, or labeled by any person other than the trademark owner of a cigarette brand or the owner's designated agent.

(12) 'Dealer' means any person who is a cigar dealer, a cigarette dealer, or a loose or smokeless tobacco dealer.

(13) 'Distributor' means any person who is a cigar distributor, a cigarette distributor, or a loose or smokeless tobacco distributor.

(14) 'First taxable transaction' means the first sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, or loose or smokeless tobacco within this state.

(15) 'Little cigar' means any cigar weighing not more than three pounds per thousand.

~~(15)~~(16) 'Loose or smokeless tobacco' means granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff or snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings, and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking but does not include cigarettes or cigars or tobacco purchased for the manufacture of cigarettes or cigars by cigarette manufacturers or cigar manufacturers.

~~(16)~~(17) 'Loose or smokeless tobacco dealer' means any person located within the borders of this state who sells or distributes loose or smokeless tobacco to a consumer in this state.

~~(17)~~(18) 'Loose or smokeless tobacco distributor' means any person who:

(A) Maintains a warehouse, warehouse personnel, and salespersons who regularly contact and call on loose or smokeless tobacco dealers; and

(B) Is engaged in the business of:

(i) Importing loose or smokeless tobacco into this state or purchasing loose or smokeless tobacco from other loose or smokeless tobacco manufacturers or loose or smokeless tobacco distributors; and

(ii) Selling the loose or smokeless tobacco to loose or smokeless tobacco dealers in this state for resale but is not in the business of selling the loose or smokeless tobacco directly to the ultimate consumer of the loose or smokeless tobacco.

~~(18)~~(19) 'Loose or smokeless tobacco importer' means any person who imports into or who brokers within the United States, either directly or indirectly, finished loose or smokeless tobacco for sale or distribution.

~~(19)~~(20) 'Loose or smokeless tobacco manufacturer' means any person who manufactures, fabricates, assembles, processes, or labels finished loose or smokeless tobacco.

~~(20)~~(21) 'Related machinery' means any item, device, conveyance, or vessel of any kind or character used in manufacturing, packaging, labeling, stamping, transporting, distributing, selling, or possessing counterfeit cigarettes.

~~(21)~~(22) 'Sale' means any sale, transfer, exchange, theft, barter, gift, or offer for sale and distribution in any manner or by any means whatever.

(22)(23) 'Stamp' means any impression, device, stamp, label, or print manufactured, printed, made, or affixed as prescribed by the commissioner.

(23)(24) 'Vending machine' means any coin-in-the-slot device used for the automatic merchandising of cigars, cigarettes, or loose or smokeless tobacco."

SECTION 2.

Said chapter is further amended by revising Code Section 48-11-2, relating to excise taxes, rate on tobacco products, the retail selling price before the addition of tax, exemptions, collection and payment on the first taxable transaction, distributors, taxes separately identified, and collection, as follows:

"48-11-2.

(a) An excise tax, in addition to all other taxes of every kind imposed by law, is imposed upon the sale, receipt, purchase, possession, consumption, handling, distribution, or use of cigars, cigarettes, and loose or smokeless tobacco in this state at the following rates:

(1) Little cigars ~~weighing not more than three pounds per thousand~~: two and one-half mills each;

(2) All ~~other~~ cigars other than little cigars: 23 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances;

(3) Cigarettes: 37¢ per pack of 20 cigarettes and a like rate, pro rata, for other size packages; and

(4) Loose or smokeless tobacco: 10 percent of the wholesale cost price, exclusive of any trade, cash, or other discounts or any promotion, advertising, display, or similar allowances.

(b) When the retail selling price is referred to in this chapter as the basis for computing the tax, it is intended to mean the ordinary retail selling price of the article to the consumer before adding the amount of the tax.

(c) The taxes imposed by this chapter are levied ~~with respect to~~ on the purchase or use of cigars, little cigars, cigarettes, or loose or smokeless tobacco by the state or any department, institution, or agency of the state and by the political subdivisions of the state and their departments, institutions, and agencies. The taxes imposed by this chapter are not imposed ~~with respect to~~ on cigars, little cigars, cigarettes, or loose or smokeless tobacco purchased exclusively for use by the patients at the Georgia War Veterans Home and the Georgia War Veterans Nursing Home.

(d) The taxes imposed by this chapter are not levied ~~with respect to~~ on cigars, little cigars, cigarettes, or loose or smokeless tobacco the purchase or use of which this state is prohibited from taxing under the Constitution or statutes of the United States.

(e) The taxes imposed by this chapter shall be advanced and paid by the distributor to the commissioner for deposit and distribution as provided in this chapter upon the first taxable transaction within the state, whether or not the transaction involves the ultimate purchaser or consumer. The seller or distributor shall collect the tax from the purchaser or consumer and the purchaser or consumer shall pay the tax to the seller or distributor. The seller or distributor shall be responsible for the collection of the tax and the payment of the tax to the commissioner. Whenever cigars, little cigars, cigarettes, or loose or smokeless tobacco is shipped from outside the state to anyone other than a distributor, the person receiving the cigars, little cigars, cigarettes, or loose or smokeless tobacco shall be deemed to be a distributor and shall be responsible for the tax on the cigars, little cigars, cigarettes, or loose or smokeless tobacco and the payment of the tax to the commissioner. No tobacco products shall be sold in this state unless lawfully obtained from a person licensed pursuant to this chapter.

(f) The amount of taxes advanced and paid to the state as provided in this Code section shall be added to and collected as a part of the sales price of the cigars, little cigars, cigarettes, or loose or smokeless tobacco sold or distributed. The amount of the tax shall be stated separately from the price of the cigars, little cigars, cigarettes, or loose or smokeless tobacco.

(g) The cigars, little cigars, cigarettes, and loose or smokeless tobacco tax imposed shall be collected only once upon the same ~~cigarettes~~, cigars, little cigars, cigarettes, or loose or smokeless tobacco."

SECTION 3.

Said chapter is further amended by revising Code Section 48-11-4, relating to the licensing of persons engaged in tobacco business, initial and annual fees, suspension and revocation of licenses, the registration and inspection of vending machines, bonds, jurisdiction, and licensing of promotional activities, as follows:

"48-11-4.

(a) No person shall engage in or conduct the business of manufacturing, importing, brokering, purchasing, selling, consigning, vending, dealing in, receiving, or distributing cigars, little cigars, cigarettes, or loose or smokeless tobacco in this state without first obtaining a license from the commissioner.

(b) All licenses shall be issued by the commissioner, who shall make rules and regulations with respect to applications for and issuance of the licenses and for other purposes of enforcing this chapter. The commissioner may refuse to issue any license under this chapter when the commissioner has reasonable cause to believe that the applicant has willfully withheld information requested of the applicant or required by the regulations to be

provided or reported or when the commissioner has reasonable cause to believe that the information submitted in any application or report is false or misleading and is not given in good faith.

(c) The fee for a manufacturer's, importer's, or distributor's license shall be \$50.00 annually, except that for a person commencing business as a manufacturer, importer, or distributor for the first time the first year's fee shall be \$250.00. Each dealer shall have a permanent license issued by the commissioner free of charge. Each license, except a dealer's license, shall begin on July 1 and end on June 30 of the next succeeding year. The prescribed fee shall accompany every application for a license and shall apply for any portion of the annual period. Each manufacturer's, importer's, distributor's, or dealer's license shall be subject to suspension or revocation for violation of any of the provisions of this chapter or of the rules and regulations made pursuant to this chapter. A separate license shall be required for each place of business. No person shall hold a distributor's license and a dealer's license at the same time.

(d) The commissioner may make rules and regulations governing the sale of cigars, little cigars, cigarettes, loose or smokeless tobacco, and other tobacco products in vending machines. The commissioner shall require annually a special registration of each vending machine for any operation in this state and charge a license fee for the registration in the amount of \$1.00 for each machine. The annual registration shall indicate the location of the vending machine. No vending machine shall be purchased or transported into this state for use in this state when the vending machine is not so designed as to permit inspection without opening the machine for the purpose of determining that cigars, little cigars, cigarettes, loose or smokeless tobacco, and other tobacco products contained in the machine bear the tax stamp required under this chapter.

(e) The manufacturer's, importer's, distributor's, or dealer's license shall be exhibited in the place of business for which it is issued in the manner prescribed by the commissioner. The commissioner shall require each licensed manufacturer, importer, or distributor to file with the commissioner a bond in an amount of not less than \$1,000.00 to guarantee the proper performance of the manufacturer's, importer's, or distributor's duties and the discharge of the manufacturer's, importer's, or distributor's liabilities under this chapter. The bond shall run concurrently with the manufacturer's, importer's, or distributor's license but shall remain in full force and effect for a period of one year after the expiration or revocation of the manufacturer's, importer's, or distributor's license unless the commissioner certifies that all obligations due the state arising under this chapter have been paid.

(f) The jurisdiction of the commissioner in the administration of this chapter shall extend to every person using or consuming cigars, little cigars, cigarettes, or loose or smokeless tobacco in this state and to every person dealing in cigars, little cigars, cigarettes, or loose

or smokeless tobacco in any way for business purposes and maintaining a place of business in this state. For the purpose of this chapter, the maintaining of an office, store, plant, warehouse, stock of goods, or regular sales or promotional activity, whether carried on automatically or by salespersons or other representatives, shall constitute, among other activities, the maintaining of a place of business. For the purpose of enforcement of this chapter and the rules and regulations promulgated ~~hereunder~~ under this chapter, notwithstanding any other provision of law, the commissioner or his or her duly appointed hearing officer is granted authority to conduct hearings which shall at all times be exercised in conformity with rules and regulations promulgated by the commissioner and consistent with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

(g) The commissioner may provide for the licensing of promotional activities, not including the sale of cigars, little cigars, cigarettes, or loose or smokeless tobacco, carried on by the manufacturer. The fee for any such license shall be \$10.00 annually."

SECTION 4.

Said chapter is further amended by revising subsection (a) of Code Section 48-11-10, relating to monthly reports of licensed distributors, contents, and authority to require reports from common carriers, warehousemen, and others, as follows:

"(a) Every licensed distributor shall file with the commissioner, on or before the tenth day of each month, a report in the form prescribed by the commissioner ~~and~~ disclosing:

(1) The quantity of cigars, little cigars, cigarettes, or loose or smokeless tobacco on hand on the first and last days of the calendar month immediately preceding the month in which the report is filed;

(2) Information required by the commissioner concerning the amount of stamps purchased, used, and on hand during the report period; and

(3) Information otherwise required by the commissioner for the report period."

SECTION 5.

Said chapter is further amended by revising subsection (a) of Code Section 48-11-14, relating to registration, reports, and tax payments of persons acquiring tobacco products subject to tax under Code Section 48-11-13, as follows:

"(a) Before any person acquires cigars, little cigars, cigarettes, or loose or smokeless tobacco subject to the tax imposed by Code Section 48-11-13, such person shall register with the commissioner as a responsible taxpayer subject to the obligation of maintaining records and making reports in the form prescribed by the commissioner. The report shall be made on or before the tenth day of the month following the month in which the cigars,

242 little cigars, cigarettes, or loose or smokeless tobacco was acquired and shall be
243 accompanied by the amount of tax due."

244 **SECTION 6.**

245 Said chapter is further amended by revising Code Section 48-11-18, relating to the procedure
246 for hearing by persons aggrieved by actions of commissioner, initiation of hearings by the
247 commissioner, production of evidence, appeals, bonds, grounds for not sustaining the
248 commissioner's action, and costs, as follows:

249 "48-11-18.

250 (a) Any person aggrieved by any action of the commissioner or the commissioner's
251 authorized agent may apply to the commissioner, in writing within ten days after the notice
252 of the action is delivered or mailed to the commissioner, for a hearing. The application
253 shall set forth the reasons why the hearing should be granted and the manner of relief
254 sought. The commissioner shall notify the applicant of the time and place fixed for the
255 hearing. After the hearing, the commissioner may make an order as may appear to the
256 commissioner to be just and lawful and shall furnish a copy of the order to the applicant.
257 The commissioner at any time by notice in writing may order a hearing on the
258 commissioner's own initiative and require the taxpayer or any other person whom the
259 commissioner believes to be in possession of information concerning any manufacture,
260 importation, use, consumption, storage, or sale of cigars, little cigars, cigarettes, or loose
261 or smokeless tobacco which has escaped taxation to appear before the commissioner or the
262 commissioner's duly authorized agent with any specific books of account, papers, or other
263 documents for examination under oath relative to the information.

264 (b) Any person aggrieved because of any final action or decision of the commissioner,
265 after hearing, may appeal from the decision to the superior court of the county in which the
266 appellant resides. The appeal shall be returnable at the same time and shall be served and
267 returned in the same manner as required in the case of a summons in a civil action. The
268 authority issuing the citation shall take from the appellant a bond of recognizance to the
269 state, with surety, conditioned to prosecute the appeal and to effect and comply with the
270 orders and decrees of the court. The action of the commissioner shall be sustained unless
271 the court finds that ~~he~~ the commissioner misinterpreted this chapter or that there is no
272 evidence to support ~~his~~ the commissioner's action. If the commissioner's action is not
273 sustained, the court may grant equitable relief to the appellant. Upon all appeals which are
274 denied, costs may be taxed against the appellant at the discretion of the court. No costs of
275 any appeal shall be taxed against the state."

SECTION 7.

Said chapter is further amended by revising Code Section 48-11-22, relating to the transportation of unstamped tobacco products, the requirement of invoices or delivery tickets, contents, confiscation and disposition absent invoice or ticket, penalties, and applicability, as follows:

"48-11-22.

(a) Every person who transports upon the public highways, roads, and streets of this state cigars, little cigars, cigarettes, or loose or smokeless tobacco not stamped or on which tax has not been paid in accordance with the alternate regulations provided by the commissioner under Code Section 48-11-3 shall have in such person's actual possession invoices or delivery tickets for the cigars, little cigars, cigarettes, and loose or smokeless tobacco which show the true name and address of the consignor or seller, the true name of the consignee or purchaser, the quantity and brands of the cigars, little cigars, cigarettes, or loose or smokeless tobacco transported, and the name and address of the person who has assumed or shall assume the payment of the tax at the point of ultimate destination. In the absence of the invoices or delivery tickets, the cigars, little cigars, cigarettes, or loose or smokeless tobacco being transported and the vehicles in which the cigars, little cigars, cigarettes, or loose or smokeless tobacco is being transported shall be confiscated and disposed of as provided in Code Section 48-11-9; and the transporter may be liable for a penalty of not more than \$25.00 for each individual carton of little cigars or cigarettes, \$50.00 for each individual box of cigars, and ~~\$25.00~~ \$50.00 for each individual container of loose or smokeless tobacco being transported by such person. The penalty shall be recovered as provided in subsection (c) of Code Section 48-11-24.

(b) This Code section shall apply only ~~with respect~~ to the transportation of more than 200 cigarettes, more than 200 little cigars, more than 20 cigars, or more than six containers of loose or smokeless tobacco."

SECTION 8.

Said chapter is further amended by revising Code Section 48-11-24, relating to penalties for possession of unstamped tobacco products, penalties for operation of an unlicensed business or activity, procedure for enforcement and collection of penalties, and costs and expenses, as follows:

"48-11-24.

(a) Any person who possesses unstamped cigarettes ~~or loose or smokeless tobacco~~ or nontax-paid cigars, little cigars, or loose or smokeless tobacco in violation of this chapter shall be liable for a penalty of not more than ~~\$25.00~~ \$50.00 for each individual carton of unstamped cigarettes ~~or loose or smokeless tobacco~~ and \$50.00 for each individual

nontax-paid carton of little cigars, box of ~~nontax-paid~~ cigars, or container of loose or smokeless tobacco in his or her possession.

(b) Any person who engages in any business or activity for which a license is required by this chapter without first having obtained a license to do so or any person who continues to engage in or conduct the business after ~~his~~ the person's license has been revoked or during a suspension of the license shall be liable for a penalty of not more than \$250.00. Each day that the business is engaged in or conducted shall be deemed a separate offense.

(c) Proceedings to enforce and collect the penalties provided by this chapter shall be brought by and in the name of the commissioner. With respect to offenses committed within the territorial jurisdiction of the court, each superior court shall have jurisdiction to enforce and collect the penalty. The costs recoverable in any such proceeding shall be recovered by the commissioner in the event of judgment in ~~his~~ the commissioner's favor. If the judgment is for the defendant, it shall be without costs against the commissioner. All expenses incident to the recovery of any penalty pursuant to this Code section shall be paid in the same manner as any other expense incident to the administration of this chapter."

SECTION 9.

Said chapter is further amended by revising Code Section 48-11-26, relating to failure to file a report or a filing false report required by chapter and penalties, as follows:

"48-11-26.

(a) With respect to this chapter, it shall be unlawful for any person, with the intent to defraud the state or evade the payment of any tax, penalty, or interest or any part of a payment when due, to:

(1) Willfully fail or refuse to file any report or statement required to be filed pursuant to this chapter or by the commissioner's rules and regulations;

(2) File or cause to be filed with the commissioner any false or fraudulent report or statement; or

(3) Aid or abet another in the filing with the commissioner of any false or fraudulent report or statement.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be punished by a fine of not more than \$1,000.00 for each separate offense."

SECTION 10.

Said chapter is further amended by revising Code Section 48-11-27, relating to false entries on invoices or records pursuant to chapter and penalties, as follows:

346 "48-11-27.

347 (a) It shall be unlawful for any person to:

348 (1) Make a false entry upon any invoices or any record relating to the purchase,
349 possession, or sale of cigarettes or loose or smokeless tobacco; or

350 (2) With intent to evade any tax imposed by this chapter, present any false entry upon
351 any such invoice or record for the inspection of the commissioner or the commissioner's
352 authorized agents.

353 (b) Any person who violates subsection (a) of this Code section shall be guilty of a
354 misdemeanor of a high and aggravated nature and, upon conviction thereof, shall be
355 punished by a fine of not more than \$250.00 for each separate offense."

356 **SECTION 11.**

357 Said chapter is further amended by revising Code Section 48-11-28, relating to possession,
358 use, manufacture, or other unlawful activities involving counterfeited stamps or tampering
359 with metering machine pursuant to chapter and penalties, as follows:

360 "48-11-28.

361 (a) With respect to this chapter, it shall be unlawful for any person to:

362 (1) Fraudulently make, utter, forge, or counterfeit any stamp prescribed by the
363 commissioner;

364 (2) Cause or procure a violation of paragraph (1) of this subsection to be done;

365 (3) Willfully utter, publish, pass, or render as true any false, altered, forged, or
366 counterfeited stamp;

367 (4) Knowingly possess any false, altered, forged, or counterfeited stamp;

368 (5) For the purpose of evading the tax imposed, use more than once any stamp required
369 by this chapter; or

370 (6) Tamper with or cause to be tampered with any metering machine authorized to be
371 used.

372 (b) Any person who violates subsection (a) of this Code section shall be guilty of a felony
373 and, upon conviction thereof, shall be imprisoned for not less than ~~one year~~ three years nor
374 more than ten years."

375 **SECTION 12.**

376 Said chapter is further amended by revising Code Section 48-11-29, relating to swearing and
377 testifying falsely with respect to matters governed by chapter, as follows:

378 "48-11-29.

379 ~~(a) It shall be unlawful for any person to:~~

~~(1) Knowingly swear to or affirm any false or fraudulent statement with intent to evade the payment of any tax imposed by this chapter; or~~
~~(2) Under oath, testify falsely at any hearing held pursuant to this chapter.~~
~~(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor Reserved."~~

385 SECTION 13.

386 This Act shall become effective upon its approval by the Governor or upon its becoming law
387 without such approval.

388 SECTION 14.

389 All laws and parts of laws in conflict with this Act are repealed.